

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "A" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 1160/Mum/2023 (A.Y. 2010-11)

Almech Enterprises 113-B, Hubtown Solaris N.S. Phadake Marg Near Ghokle Flyover Andheri East Mumbai-400 069. PAN : AAFA1594G (Appellant)	Vs.	ITO-25(2)(2) Pratishtha Bhavan 9 th Floor M.K. Road New Marine Lines Mumbai-400 020. (Respondent)
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Assessee by	Shri Shashi Bekal
Department by	Shri Manoj Kumar Sinha
Date of Hearing	13.07.2023
Date of Pronouncement	13.07.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 21.2.2023 passed by the learned CIT(A)-48, Mumbai and it relates to A.Y. 2010-11. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of Rs.10,58,527/- relating to the alleged bogus purchases.

2. The assessee is engaged in the business of contractor, manufacture and sale of architectural goods. The Assessing Officer received information that the assessee has indulged in the practice of availing accommodation entries by way of bogus purchases from hawala traders. Accordingly, he reopened the assessment of the year under consideration by issuing notice under section 148 of the Act. As per the information received by the Assessing Officer, the assessee has purchased goods worth Rs. 10,58,527/-

from accommodation entry providers. The Assessing Officer disallowed the entire amount of purchases mentioned above and the learned CIT(A) also confirmed the same. Aggrieved, the assessee has filed this appeal before the Tribunal.

3. The Learned AR submitted that the Assessing Officer has made identical addition in succeeding assessment year i.e. in A.Y. 2011-12. However, the learned CIT(A), vide his order dated 2.11.2017 passed in Appeal No. CIT(A)-37/IT-39/ITO-25(2)(2)/2016-17, has reduced the disallowance to 12.5% of alleged bogus purchases by accepting the contention of the assessee that the assessee could not have sold goods without purchasing them and further observing that there is no evidence to show that the assessee has received back the cash from the accommodation entry providers. He submitted that in AY 2011-12, the learned CIT(A) has followed the decision rendered by Hon'ble Bombay High Court in the case of Nikunj Eximp Enterprises Vs. CIT (216 Taxman 171)(Bom) and also decision rendered by Hon'ble Gujarat High Court in the case of Simit P. Sheth (356 ITR 415(Guj)). The Learned AR submitted that the assessee has accepted the disallowance confirmed by the learned CIT(A) in AY 2011-12. Accordingly, he submitted that the addition may be restricted in this year also to 12.5% of the value of alleged bogus purchases, since the facts are identical in both the year.

4. The Learned DR, on the contrary, supported the order passed by the Assessing Officer.

5. We have heard the rival contentions and perused the record. The Revenue does not dispute the fact that the assessee has sold goods and it could not have sold goods without purchasing it. In this kind of situation, the settled principle is that only profit element involved in the alleged bogus purchases is liable to the assessed. We noticed that the learned CIT(A) has

rendered his decision in AY 2011-12 by following the above said principles, which was laid down in the decision rendered by Hon'ble Bombay High Court in the case of Nikunj Eximp Enterprises (supra) and also decision of Hon'ble Gujarat High Court in the case of Simit P. Sheth (supra). Since the facts prevailing in this year is identical with that prevailed in AY 2011-12, we are of the view that the decision rendered by the learned CIT(A) in A.Y. 2011-12 may be followed in this year also. Accordingly, we set aside the order passed by the learned CIT(A) in the year under consideration and direct the Assessing Officer to restrict the disallowance to 12.5% of the value of the alleged bogus purchases.

6. In the result, appeal of the assessee is partly allowed.

Pronounced in the open court on 13.7.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai.; Dated : 13/07/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai